

GCF9PICF

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 MICHAEL PICARELLA,

4 Plaintiff,

5 v.

14 CV 4463 (ALC)

6 HSBC (USA) SECURITIES, INC.,

7 Defendant.

8 -----x

New York, N.Y.  
December 15, 2016  
9:35 a.m.

10 Before:

11 HON. ANDREW L. CARTER,

12 District Judge

13 APPEARANCES

14 LIDDLE & ROBINSON LLP  
15 Attorneys for Plaintiff

16 BY: JAMES R. HUBBARD  
17 BLAINE H. BORTNICK  
ASA F. SMITH  
CHRISTINE PALMIERI

18 BOIES, SCHILLER & FLEXNER LLP  
19 Attorneys for Defendant

20 BY: RANDALL W. JACKSON  
DAVID L. SIMONS  
NICHOLAS STANDISH

21 GIBSON, DUNN & CRUTCHER LLP  
22 Attorneys for Defendant

23 BY: GABRIELLE F. LEVIN  
24  
25

GCF9PICF

(In open court; jury not present)

THE COURT: So, counsel, we're waiting for all of the jurors to arrive. Again, as we indicated yesterday, they're not going to come in here into the courtroom. When they arrive in the jury room they'll resume their deliberations.

Are we all set to send those documents in now, the PX and the DX documents, all those are together?

MR. HUBBARD: Yes, your Honor. We delivered them to Ms. Hunter.

MR. JACKSON: So they are right there on Ms. Hunter-Hicks' desk.

THE COURT: It seems to me that we'll wait for all the jurors to arrive and then my deputy will hand that to the CSO and he'll send that in. Any objection to that from either side?

MR. HUBBARD: No, your Honor.

MR. JACKSON: No, your Honor.

THE COURT: I don't think there's anything else we need to discuss. As we discussed earlier, just make sure that you -- that my deputy has your cellphone information in case we need to contact you.

I plan to take a lunch break between 1 and 2, if the jury is still working at that time, so counsel can get a lunch. And obviously if the jury has any notes during that time they'll have to wait until afterwards for us to deal with them.

GCF9PICF

1 But I don't plan on telling the jury that we're taking a lunch  
2 break. Any objection to that? Any objection to that?

3 MR. HUBBARD: No, your Honor.

4 MR. JACKSON: No. Thank you, Judge.

5 THE COURT: So let's just have counsel just wait  
6 around so we can make sure all the jurors get here and send  
7 that stuff in.

8 MR. BORTNICK: One question, your Honor. Yesterday  
9 the second note that the jurors sent just about wanting, about  
10 timing, departure. I don't know if your Honor made that a  
11 court exhibit or not as you did the first note. Because if you  
12 made it a court exhibit I guess it would be Court Exhibit 4 and  
13 we just don't have a copy of that.

14 THE COURT: I think that's Court Exhibit 5. Court  
15 Exhibit 1 is the jury instructions. Court Exhibit 2 is the  
16 verdict sheet. Court Exhibit 3 was the jury's first note  
17 requesting those documents. Court Exhibit 4 was our note that  
18 went back into the jury telling them that we're going to give  
19 that to them. And that was Court Exhibit 5.

20 MR. BORTNICK: So we need four and five. We never  
21 received a copy of those.

22 THE COURT: Well four is what we handwrote here in  
23 court and showed to counsel. That already went in to the jury.

24 MR. BORTNICK: That's fine. I just want -- that's  
25 fine.

GCF9PICF

1 THE COURT: I don't want to really go and retrieve  
2 that from them to make a copy of that. We'll make a copy of  
3 five.

4 MR. BORTNICK: Just for the file. That's all.

5 THE COURT: Anything else from either side?

6 MR. HUBBARD: Not from the plaintiff, your Honor.

7 MR. JACKSON: No, your Honor. Thank you.

8 THE COURT: So we'll just hang out, make sure all the  
9 jurors get here, and then we'll send that in. Okay. Thanks.

10 (Recess pending verdict)

11 THE COURT: Put some things on the record here for  
12 counsel.

13 So the jurors are all here. We're going to send all  
14 of these exhibits in, the DXs and the PXs that counsel have  
15 agreed upon.

16 We were able to get from the CSO a copy of Court  
17 Exhibit 4 or get Court Exhibit 4. We've made copies for  
18 counsel. Counsel should have a copy of that. And you should  
19 have or you will have soon copies of Court Exhibit 5. You do  
20 have copies of Court Exhibit 5 as well I believe; is that  
21 correct?

22 MR. JACKSON: Yes, your Honor.

23 THE COURT: So we will send this in to the jury. Is  
24 there anything else we need to take up?

25 MR. JACKSON: No. Thank you, your Honor.

GCF9PICF

1 THE COURT: That's going in. I'll see you later.

2 MR. HUBBARD: Thank you, Judge.

3 (Recess pending verdict)

4 THE COURT: So, we've received a note marked today  
5 December 15, 2016 at 10:15 a.m. It reads as follows. This is  
6 Court Exhibit 6.

7 Dear Judge Carter: We, the jury, have arrived at a  
8 verdict. Signed, Juror No. 1.

9 My intention is to bring the jury out and have them  
10 announce their verdict, which my intention is to, once they've  
11 announced -- once the foreperson announces the verdict -- first  
12 they'll come out and we'll ask them if, in fact, they have  
13 arrived at a verdict. And we'll ask the foreperson to stand  
14 for that.

15 I'll ask the foreperson to hand my deputy a copy of  
16 the verdict so I can inspect it for irregularity, hand it back  
17 to my deputy, who will give it to the foreperson.

18 I will ask the foreperson to read the questions and  
19 their answers to those questions.

20 Then I intend to poll all the jurors after that.

21 Following that it would be my intention to ask the  
22 jury to remain here for a moment. Go into the robing room and  
23 decide whether or not -- what counsel's positions are in terms  
24 of any need for any sort of special interrogatories and things  
25 like that before we let the jurors go. How does that sound to

GCF9PICF

1 the plaintiff?

2 MR. HUBBARD: Sounds fine, your Honor.

3 THE COURT: How does that sound to the defendant?

4 MR. JACKSON: Yes, your Honor. Thank you.

5 THE COURT: Okay. Just one moment.

6 We're going to go ahead and bring the jury in.

7 This should go without saying. Whatever the verdict  
8 is counsel and the parties should not have any outbreaks or  
9 anything like that.

10 (The jury returned to the courtroom with a verdict;  
11 time noted: 10:40 a.m.)

12 THE COURT: Good morning. Please be seated. Welcome  
13 back. We received your most recent note dated December 15,  
14 2016, 10:15 a.m. It's Court Exhibit 6. It reads as follows.

15 Dear Judge Carter: We, the jury, have arrived at a  
16 verdict. Signed, Juror No. 1.

17 So what we're going to do is I will ask juror one, the  
18 foreperson, to please hand my deputy the verdict so I may  
19 inspect it first.

20 I'm going to hand this back to my deputy who will hand  
21 this back to the foreperson. And here's what we're going to  
22 do. I will ask the foreperson to rise in just a moment and we  
23 will have you announce the verdict. And that means you will  
24 take the microphone. You'll read the questions and you will  
25 read the jury's answers to those questions. It's important

GCF9PICF

1 that all of the jurors listen closely because after this is  
2 announced I will poll each and every one of you and I will ask  
3 you if this is, in fact, your verdict. Okay. So go ahead  
4 foreperson.

5 JUROR: Judge Carter.

6 Question No. 1. Has the plaintiff proved by a  
7 preponderance of the evidence that he engaged in protected  
8 activity under Title VII of the Civil Rights Act? Yes.

9 Question No. 2. Has plaintiff proved by a  
10 preponderance of the evidence that the defendant was aware of  
11 the plaintiff's participation in the protected activity prior  
12 to taking some adverse employment action against him? Yes.

13 Has the plaintiff proved by a preponderance of the  
14 evidence that the defendant took a material adverse employment  
15 action against him? Yes.

16 Has the plaintiff proved by a preponderance of the  
17 evidence that the defendant took the adverse employment action  
18 against him because of his protected activity in violation of  
19 Title VII? No.

20 New York City Human Rights Law. Has the plaintiff  
21 proved by a preponderance of the evidence that he engaged in  
22 protected activity under the New York City Human Rights Law?  
23 Yes.

24 Has the plaintiff proved by a preponderance of the  
25 evidence that the defendant knew of the plaintiff's

GCF9PICF

1 participation in protected activity prior to taking some  
2 adverse employment action against him? Yes.

3 Has the plaintiff proved by a preponderance of the  
4 evidence that the defendant took an adverse employment action  
5 against him? Yes.

6 Has the plaintiff proved by a preponderance of the  
7 evidence that the plaintiff's protected activity was a  
8 motivating factor in the defendant's decision to take the  
9 adverse employment action in violation of the New York City  
10 Human Rights Law? No.

11 (Jury polled; each juror answered in the affirmative)

12 THE COURT: Just hold on for just one moment. I'm  
13 going to see counsel in the robing room. We'll be right out.

14 (In the robing room)

15 THE COURT: So that's the verdict. It doesn't appear  
16 to me that there's any need for any special interrogatories.  
17 What's plaintiff's position on that?

18 MR. HUBBARD: I don't think so, your Honor.

19 THE COURT: Defendants.

20 MR. JACKSON: No. We don't think so. Thank you,  
21 Judge.

22 THE COURT: So my intention now is to thank the jury  
23 for their service and let them go.

24 Is there anything else that counsel would like me to  
25 say to the jurors? Perhaps I can say to the jury -- I can say



GCF9PICF

1 to the jury that they're free to now discuss the case with  
2 anyone if they wish but they are not required to. Perhaps  
3 that's something I should say. Counsel have any views on that?

4 MR. HUBBARD: I think that's fine, your Honor. Just  
5 one other thing.

6 THE COURT: Yes.

7 MR. HUBBARD: Thank you and your staff for the hard  
8 work the last two weeks.

9 THE COURT: That's fine.

10 MR. HUBBARD: Thank you so much.

11 MR. JACKSON: Yes, your Honor. We think that would be  
12 an appropriate instruction. And we echo Mr. Hubbard's thanks  
13 to the court and the staff and the court reporter.

14 We would also ask your Honor if -- since we may not  
15 get an opportunity to speak with them, if the Court is thanking  
16 them, if you could also pass along that the parties have also  
17 asked the Court say that they appreciate the jurors' service.

18 THE COURT: I'll certainly say that unless you object.  
19 Thank you. We'll do that.

20 (In open court)

21 THE COURT: On behalf of the Court, all of the judges  
22 in the Southern District of New York, both parties, and all  
23 counsel, I want to thank you for your jury service. I want to  
24 thank you for the close attention that you've paid to this  
25 case. And I hope that you have a pleasant rest of 2016.

GCF9PICF

1 I'll also let you know that now, if you wish, you are  
2 free to discuss this case with anyone you like, but you are not  
3 required to. All right. So have a pleasant day. Thank you.

4 (Jury excused)

5 THE COURT: Anything else from counsel?

6 MR. HUBBARD: Not from the plaintiff, your Honor.

7 THE COURT: Anything else from the defendants?

8 MR. JACKSON: No, your Honor. Thank you.

9 THE COURT: Okay. Have a good day.

10 MR. JACKSON: Thanks, Judge.

11 (Adjourned)

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25